SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944

No. 1000

Y. A. THOMPSON, TRUSTEE, THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY, DEBTOR, AND THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY,

Petitioners,

vs.

THE TEXAS MEXICAN RAILWAY COMPANY

TITION FOR WRIT OF CERTIORARI TO THE OURT OF CIVIL APPEALS, FOURTH SUPREME UDICIAL DISTRICT, STATE OF TEXAS, AND UPPORTING BRIEF.

E. H. CRENSHAW, JR.,
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Counsel for Petitioners

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by the Interstate Commerce Commission permitting the Trustee to abandon his operations (R. 85). The court did not grant the injunction sought by Respondents but if did assume jurisdiction over that question.

6. Petitioners perfected an appeal to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, which in all things affirmed the judgment of the District Court (R. 199) Opinion (R. 189-198).

7. Petitioners applied to the Supreme Court of Texas for a Writ of Error and this was refused by said Court (no opinion) (R. 212), which overruled Petitioners' Motion for Rehearing on November 29, 1944 (R. 212). Under the law of Texas, the effect of the order of the Supreme Court of Texas refusing Petitioners' Application for Writ of Error is to make the judgment of the Court of Civil Appeals final and to approve the principles of law declared in that Court's opinion. *Texas Rules of Civil Procedure*, Rule 483.[2] The Court of Civil Appeals thus became, in this case, the highest Court of the State in which a decision could be had. See *Bacon* v. *Texas*, 163 U. S. 207.

8. Petitioners have at all times recognized the validity of the contract of 1904 and have offered to pay all sums due under the contract and still stand ready and willing to pay such sums (R. 23).

9. Jurisdiction of the Supreme Court of the United States is invoked pursuant to Judicial Code, Sec. 237(b), as amended by the Act of February 13, 1925, 28 U. S. C. Sec. 344b, 43 Stat. 937, reading in part:

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[2] "Rule 483. Order on Application for Writ of Error.
In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation, 'Refused.'"

"(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; * * *; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

10. Petitioners' pleas to the jurisdiction of the trial court raised four questions involving the proper interpretation of, and titles, rights, privileges and immunities claimed under statutes of the United States, each decided adversely to Petitioners in the highest court of the State of Texas (Court of Civil Appeals), in which a decision could be had:

(a) Whether, in view of the provisions of Sec. 77 of the Bankruptcy Act, reading in part as follows:

"If the petition is so approved, the court in which such order is entered shall during the pendency of the proceedings under this section and for the purpose thereof, have exclusive jurisdiction of the debtor and its property, wherever located * * *," (11 U. S. C. Sec. 205a, as amended 47 Stat. 1474, 49 Stat. 911, 53 Stat. 406),

exclusive jurisdiction of a suit of this character against the trustee and debtor, to restrain their operations, to diminish the extent of the property subject to their control, and to recover damages, is vested in the court of bankruptcy;

(b) Whether the stay orders issued by the court of bankruptcy (R. 120, 124) prohibited the prosecution of this suit elsewhere than in the court of bankruptcy;

(c) Whether, in view of Section 1(18) of the Interstate Commerce Act, the trackage contract of 1904, expressly granting the right to operate over the line in question, could be lawfully or sucessfully terminated without the Interstate Commerce Commission having first issued a certificate of public convenience and necessity, permitting abandonment of the operations authorized by and subsequently conducted under said contract;

(d) Whether, in view of Section 1(18)-(20) and other provisions of the Interstate Commerce Act, exclusive jurisdiction to determine a fair rental or compensation for the use by an interstate carrier by rail of a trackage right over the property of another such carrier is vested in the Interstate Commerce Commission.

Every interpretation, title, right, privilege and immunity thus set up or claimed by Petitioners under the Constitution and laws of the United States or authority exercised thereunder, was overruled, denied and refused by the action of the Court of Civil Appeals on each of said questions.

11. (a) Each of the foregoing questions was raised in the District Court of Nueces County, Texas, by pleas to the jurisdiction (R. 48, 56), which were overruled (R. 69), and by the answer of the defendants (R. 1). The trial court adjudged that the trackage contract of 1904 was terminated and cancelled as of November 1, 1941, and entered judgment awarding damages in the amount of $184,929.85 as the value of the use of Respondent's property from November 1, 1941 to August 27, 1943; adjudged costs jointly and severally against the Trustee and the St. L. B. & M., and denied the injunction sought by Respondent (R. 85). Each of the questions presented above was further raised in the trial court by Motions for New Trial (R. 91, 96), which were overruled (R. 95, 100), and by motion for judgment *non obstante veredicto* (R. 79), which was also overruled (R. 84).

(b) Petitioners perfected an appeal to the Court of Civil Appeals, Fourth Supreme Judicial District of Texas, and each of the questions was raised before that court by Points of Error in the Brief of Petitioners filed in that court (Points 1, 2, 3 and 4; R. 186). Its opinion (R. 189), reported in 181 S. W. 2nd 895, declared that:

(i) "The fact that the Brownsville Railway (St. L. B. & M.) is in the process of reorganization in bankruptcy (Sec. 77) does not deprive the State Court of jurisdiction of the subject matter of this controversy;"

(ii) "As no affirmative action had been taken by the Interstate Commerce Commission which would in any way conflict with the action taken by the court below, said court had jurisdiction of this controversy and was empowered to render judgment;"

(iii) "The 1904 contract was legally terminated and cancelled as of October 31, 1941."

The opinion and judgment of the Court of Civil Appeals mentioned, but wholly disregarded the effect of, the stay orders entered in the Court of Bankruptcy (R. 192). Petitioners again raised each of the points relied upon in a Motion for Rehearing (R. 199), which was overruled by the Court of Civil Appeals (R. 204).

(c) Petitioners then filed in the Supreme Court of Texas an application for writ of error, again raising each of the issues (R. 204-210). The application was refused by said Court (R. 212). Finally, each of the issues was again raised in the Supreme Court of Texas by a Motion for Rehearing (R. 213-217), which was overruled on November 29, 1944 (R. 212).

12. This Court should exercise its discretion to grant a Writ of Certiorari:

(a) Because the court below has decided Federal questions of substance with regard to the exclusive ju-

risdiction of the Court of Bankruptcy in a way probably not in accord with the applicable decisions of this Court;

(b) Because the court below has decided an important question of Federal law with respect to the effect of the stay orders entered in the Court of Bankruptcy which has not been but should be settled by this Court;

(c) Because the court below has decided an important question of Federal law which has not been but should be settled by this Court and has decided such question in a way which is probably in conflict with the applicable decisions of this Court and which is in conflict with the decision of the court of last resort of another State, *Taylor* v. *Santa Fe, etc.*, 38 N. M. 457, with respect to the question whether a trackage contract between interstate carriers by railroad may be lawfully terminated without the Interstate Commerce Commission having first issued a certificate of public convenience and necessity, permitting abandonment of the operations authorized by and conducted under said contract; and

(d) Because the court below has decided a Federal question of substance with respect to the exclusive jurisdiction of the Interstate Commerce Commission to determine a fair rental or compensation for the use by an interstate carrier by railroad of a trackage right over the property of another such carrier in a way probably not in accord with the applicable decisions of this Court.

13. Petitioners file herewith a certified transcript of the record, as required by Rule 38(1) and attach hereto a brief in support of this Petition.

WHEREFORE, Petitioners, jointly and severally, pray that in the exercise of its discretion, this Court issue its Writ of Certiorari to review the decision herein of the Court of

Civil Appeals for the Fourth Supreme Judicial District of Texas, and for such other orders as may be appropriate.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

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GUY A. THOMPSON, TRUSTEE; THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY; DEBTOR, AND THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY,

Petitioners.

vs.

THE TEXAS MEXICAN RAILWAY COMPANY

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinion Below

The Supreme Court of Texas did not write any opinion. The opinion of the Court of Civil Appeals is not reported officially but may be found in 181 S. W. 2nd 895.

Grounds of Jurisdiction

Jurisdiction of this Court is invoked under Section 237b of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. Sec. 344b, 43 Stat. 937, providing that:

> "(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree

has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; * * *; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

As more particularly set out in the foregoing petition for certiorari in paragraphs 10 and 11, the judgment of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas involved substantial Federal questions dealing with the construction and application of the Bankruptcy Act, the Interstate Commerce Act, and orders of a court of bankruptcy, all of which were decided adversely to Petitioners by the highest court of the State of Texas in which a decision could be had.

In *Brown* v. *Gerdes*, 321 U. S. 178, certiorari was granted to review the decision of a State Court of last resort which involved the construction of the Bankruptcy Act, and in *Illinois Steel Co.* v. *Baltimore & Ohio Railroad Co.*, 320 U. S. 508, certiorari was granted to review the decision of a State Court of last resort which involved the construction of the Interstate Commerce Act.

The Court of Civil Appeals was, in this case, the State Court of last resort. *Bacon* v. *Texas*, 163 U. S. 207.

Statement of the Case

On November 1, 1904, Petitioner, The St. Louis, Brownsville and Mexico Railway Company, and Respondent, Texas Mexican Railway Company, entered into a contract whereby Respondent granted to The St. Louis, Brownsville and Mexico Railway Company, upon specified rentals, "the right to operate its trains over the main line, * * * as

well as the right to use jointly with the party of the First Part (Texas Mexican Railway Company) * * * real estate and all other property appurtenances as they now exist * * *, which shall be incident and necessary to the use of the said party of the Second Part for the purpose of running its passenger and freight trains over the said line of the party of the First Part between the points hereinbefore mentioned (Robstown and Corpus Christi), * * *, and said right of usage to include also the use of the terminals of the party of the First Part in Corpus Christi; and the said party of the First Part further grants to the said party of the Second Part the right to carry over its said tracks such freight, mail, express and passengers as it may desire, and to receive for its own use and compensation all revenue arising from such services, *and the further right to generally extend and transact its business as a common carrier over the said line* * * * (Emphasis ours).

"This contract * * * shall continue for the full term of fifty (50) years from date, unless sooner terminated by the parties hereto * * *.

"It is further agreed that this contract may be terminated without giving any reason therefor, by either party, upon giving 12 months notice of such intent to terminate the lease" (R. 145).

In certain respects, not here material, the contract was amended in 1914 (R. 146).

On May 2, 1933, The St. Louis, Brownsville and Mexico Railway Company filed its petition, under Section 77 of the Bankruptcy Act, in the District Court of the United States, Eastern Division, Eastern District of Missouri, in a proceeding theretofore filed in said court entitled "In the Matter of Missouri Pacific Railroad Company, Debtor," No. 6935, in Bankruptcy. On the same date said United States

District Court entered an order approving said petition as properly filed (R. 108), and your petitioner, Guy A. Thompson, Trustee, has been at all times material to this suit and is now the duly appointed, qualified and acting Trustee of The St. Louis, Brownsville and Mexico Railway Company, Debtor, in said proceeding, under Section 77 of the Bankruptcy Act (R. 14, 15).

On May 13, 1933, the court of bankruptcy issued its order No. 18, prohibiting any interference with the debtor or its properties (R. 120) (see page 25, *infra*), and on December 2, 1935, by Order No. 116a stayed all suits against the Debtor except "claims for damages caused by the operation of trains, buses or other means of transportation" (R. 123) (see page 25, *infra*).

On October 28, 1940, Respondent notified Petitioners that it was exercising its right to terminate and cancel said contract effective twelve months after November 1, 1940 (R. 42). The Trustee continued his operations in compliance with the requirements of Section 1 (18) of the Interstate Commerce Act, and on May 25, 1942 (R. 1), Respondent sued Petitioners in the District Court of Nueces County, Texas. In its amended petition, upon which trial was had, Tex-Mex prayed that it recover judgment:

> "(a) Enjoining each Defendant, jointly and severally, together with the agents, servants and employees of each several defendants from going upon or from sending motive power and employees of either defendant upon any track, side track or terminal of Plaintiff in the City of Corpus Christi or from Corpus Christi to Robstown in the absence of affirmative consent from Plaintiff.
>
> "(b) That it recover its judgment, jointly and severally, against the Defendants for damages in the sum of $500.00 per day for each and every day said property of Plaintiff has been used by Defendants or either of them since November 1, 1941.

"(c) In event it be held that Plaintiff is not entitled to recover said $500.00 per day, Plaintiff then prays, in the alternative, that it recover, jointly and severally, against said Defendants the reasonable value of the use of said property to Defendants from November 1, 1941, until said property be vacated by the Defendants and unmolested possession and use be surrendered and returned to Plaintiff.

"(d) Plaintiff further prays that it recover in any event exemplary damages against the Defendants, jointly and severally, at the rate of $50.00 a day for each and every day they or either thereof have made use of Plaintiff's property as aforesaid from and after November 1, 1941" (R. 46, 47).

It is undisputed that at all times material hereto both Petitioners and Respondent were interstate carriers by railroad, subject to the provisions of the Interstate Commerce Act, 49 U. S. C., Sec. 1, et seq., 24 Stat. 397, as amended by the Act of February 28, 1920, 41 Stat. 474, and that no certificate of public convenience and necessity had been applied for or issued by the Interstate Commerce Commission permitting abandonment of the Trustee's operations over Respondent's line of railway.

The District Court overruled pleas to its jurisdiction (R. 69), tried the case on the merits (R. 303-1128,[3] and entered judgment that the contract of 1904 had been cancelled and terminated, notwithstanding the absence of a certificate of public convenience and necessity by the Interstate Commerce Commission permitting the Trustee to abandon his operations under the contract, awarded Respondent damages of $184,929.85 against the Trustee, and assessed costs, jointly and severally, against the Petitioners (R. 85-91). Injunctive relief and exemplary damages were denied. Petitioners perfected an appeal to the Court

[3] Reference is to pages 303-1128 of original record which were omitted from printed record by stipulation.

of Civil Appeals for the Fourth Supreme Judicial District of Texas, which, in all things, affirmed the judgment of the District Court (R. 199), and application to the Supreme Court of Texas for Writ of Error was refused (R. 212).

Specification of Errors

I

The Court of Civil Appeals erred in affirming the trial court's judgment overruling Petitioners' pleas to the jurisdiction.

II

The Court of Civil Appeals erred in affirming the judgment of the trial court on the merits, in that neither of said courts had jurisdiction over the subject matter of this suit.

III

The Court of Civil Appeals erred in entering any judgment other than dismissal or stay of the suit in view of the stay orders entered in the Court of Bankruptcy.

IV

The Court of Civil Appeals erred in entering judgment affirming the judgment of the trial court that the trackage contract here involved had been lawfully cancelled and terminated without the Interstate Commerce Commission having first issued a certificate of public convenience and necessity permitting abandonment of the Trustee's operations over Respondent's line of railway.

V

The Court of Civil Appeals erred in entering judgment affirming the judgment of the trial court assessing damages

and costs against Petitioners in view of the exclusive jurisdiction of the Interstate Commerce Commission to determine the fair rental or compensation for the use by Petitioners of the railroad properties involved.

ARGUMENT

Point I

Exclusive jurisdiction of the subject matter of this suit is vested in the Court of Bankruptcy.

Section 77 of the Bankruptcy Act provides that after the filing of a petition by a railroad for reorganization:

> "If the petition is so approved the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the Debtor and its property wherever located * * *." 11 U. S. C. Sec. 205a, 47 Stat. 1474, as amended by 49 Stat. 911 and 49 Stat. 1969.

The plain meaning of this language is certainly that if the Bankruptcy Court has exclusive jurisdiction, no other court can have any jurisdiction to hear and determine a suit involving the title to or right of possession of the property which is in *custodia legis*, or control of the operations of the Trustee operating the property subject to the orders of the court.

In addition to the foregoing provisions of Section 77 of the Bankruptcy Act, Section 77c(2) provides that:

> "The Trustee or Trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the Judge and consistently with the provisions of this section, all of the powers of a Trustee appointed pursuant to Section 72 or any other section of this Title, and, to the extent not incon-

sistent with this Section, if authorized by the Judge, the powers of a Receiver in an equity proceeding, and, subject to the control of the Judge and the jurisdiction of the Commission as provided by Chapter I of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the Debtor."

In *Isaacs versus Hobbs Tie & Timber Company*, 282 U. S. 734, the Court, opinion by Mr. Justice Roberts, said:

"Upon adjudication, title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the bankruptcy court. Mueller v. Nugent, 184 U. S. 1, 14, 46 L. Ed. 405, 414, 22 S. Ct. 269. The title and right to possession of all property owned and possessed by the Bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the court sits. Robertson v. Howard, 229 U. S. 254, 259, 260, 57 L. Ed. 1174, 1177, 33 S. Ct. 854; T. E. Wells & Co. v. Sharp, 125 C. C. A. 609, 208 Fed. 393; Galbraith v. Robson-Hilliard Grocery Co., 133 C. C. A. 46, 216 Fed. 842, 32 Am. Bankr. Rep. 752. It follows that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. Robertson v. Howard, 229 U. S. 254, 259, 260, 57 L. Ed. 1174, 1177, 33 S. Ct. 854, supra; Re Wilka (D. C.) 131 Fed. 1004. When this jurisdiction has attached the court's possession cannot be affected by actions brought in other courts. White v. Schloerb, 178 U. S. 542, 44 L. Ed. 1183, 20 S. Ct. 1007; Murphy v. John Hofman Co., 211 U. S. 562, 53 L. Ed. 327, 29 S. Ct. 154; Dayton v. Stanard, 241 U. S. 588, 60 L. Ed. 1190, 36 S. Ct. 695. This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring

jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property. Murphy v. John Hoffman Co. 211 U. S. 562, 53 L. Ed. 327, 29 S. Ct. 154, supra; Wabash R. Co. v. Adelbert College, 208 U. S. 38, 52 L. Ed. 379, 28 S. Ct. 182; Harkin v. Brundage, 276 U. S. 36, 72 L. Ed. 457, 48 S. Ct. 268."

There can be no doubt that the rights granted to the St. L. B. & M. under the trackage agreement of 1904 were *property* rights of the bankrupt which passed to the Trustee upon the approval of its petition for reorganization under Section 77 of the Act, and that the existence, validity and effect of the rights granted by the contract should be adjudicated in the Court of Bankruptcy alone, for as was said in *Ex Parte Baldwin*, 291 U. S. 610, opinion by Mr. Justice Brandeis:

"* * * where a court of competent jurisdiction has, through its officers, taken property into its possession, the property is thereby withdrawn from the jurisdiction of other courts. * * * The jurisdiction in such cases is exclusive of the jurisdiction of other courts, although otherwise the controversy would be cognizable in them. Murphy v. John Hofman Co., 211 U. S. 562, 569, 29 S. Ct. 154, 53 L. Ed. 327. In bankruptcy, this rule applies regardless of whether the property is located in the district in which the bankruptcy proceedings originated * * *."

In *Continental Bank & Trust Company* v. *Chicago R. I. & P. Ry. Co.*, 294 U. S. 648, the Court, in an opinion by Mr. Justice Sutherland, held that a Federal District Court sitting in bankruptcy had properly enjoined a sale under a mortgage and deed of trust of securities pledged as collateral by the debtor railroad. The Court said:

"* * * As has already been shown, the equity in the collateral remaining in the railroad company is property; and over this property, wherever located,

the federal district court is given exclusive jurisdiction of the precise language of Section 77, just quoted. As a necessary consequence of that jurisdiction, the court must have the power to preserve and safeguard the property for the benefit of the trust estate so far as that is compatible with the rights of the pledgees. Jurisdiction over the property wherever located carries with it jurisdiction to enjoin, in a proper case, interferences with the property."

The rights granted under the trackage agreement of 1904 were no less property of the bankrupt than the equity in the collateral remaining in the railroad company in the *Continental Bank & Trust Company case, supra.* Moreover, that case did not involve the operations of the Trustee. The principles there announced must apply with even greater force to this case where the very operation by the Trustee of the property of the debtor are at stake. In this case, the relief sought was in essence a judicial determination that the contract of 1904 had been cancelled and that the property rights granted under that contract were no longer in force. Respondent further sought an injunction against the Trustee's operations, compensatory damages and exemplary damages for the Trustee's use of the property, which use was subject to the control and direction of the Court of Bankruptcy. Moreover, the Trustee could not lawfully cease or abandon such use of the property without the Interstate Commerce Commission having first issued a certificate of public convenience and necessity permitting such abondonment, as will be more particularly shown hereafter. We can conceive of no case which more directly interferes with the exclusive jurisdiction of the Court of Bankruptcy, the operations of the Trustee in Bankruptcy, or the rights of the creditors of the bankrupt than the case pleaded by Respondent in the court below.

State Courts, other than Texas, have readily recognized the rule of exclusive jurisdiction in the bankruptcy court.

In *Palmer* v. *Larchmont Manor Company*, 30 N. E. (2d) 599, 284 N. Y. 288, Palmer, the Trustee in Bankruptcy of the N. Y., N. H. & H. Ry., brought an action in the State Court to compel the determination of a claim to real property. The complaint was dismissed by the trial court on the ground that the New York court had no jurisdiction over the subject matter of the litigation in view of the bankruptcy. The Court of Appeals of New York said:

> "Upon approval of the petition and upon entry of an order thereon, the bankruptcy court had exclusive jurisdiction of the debtor and its property wheresoever situated. National Bankruptcy Act, Sec. 77, Sub. a, 11 U. S. C. A. Sec. 205, Sub. a. The trustees took possession of the real property in suit following their appointment. That possession was similar to that of a trustee in an ordinary bankruptcy proceeding upon adjudication. Isaacs v. Hobbs Tie & Timber Co., 282 U. S. 734, 737, 51 S. Ct. 270, 75 L. Ed. 645; National Bankruptcy Act, Sec. 77, Sub. c, Par. (2), 11 U. S. C. A. Sec. 205, Sub. c(2). The trustees were powerless to confer, by bringing suit, jurisdiction upon our courts. Isaacs v. Hobbs Tie & Timber Co., supra."

In the opinion of the Court of Civil Appeals in the case at bar it is said that:

> "The relief prayed for by the Texas Mexican Railway Company and granted by the court below was an award of compensation for the use of its property (for a specified period of time) by another *having no contract rights authorizing such use*" (Emphasis ours).

The granting of any relief to Respondent in this cause was, in all events, dependent upon the finding that Petitioners had no contract rights authorizing the use of Respondent's property. Thus, the courts below necessarily decided the question of the existence and validity of the rights granted the St. L. B. & M. under the contract of 1904. That question was the precise question that the State courts

had no jurisdiction to determine. In addition to this, the Court of Civil Appeals has entirely ignored the fact that the suit was not merely one for compensatory damages, but, as shown by the quotation from plaintiff's petition (R. 36-47, 47, page 14, *supra*), it was a suit for injunction, which, if granted, would have prevented the Trustee from making any use of the property involved. The Court of Civil Appeals obviously failed to grasp the fact that the jurisdiction of the State court was determined by the subject matter and main purpose of the suit (cancellation of the contract and injunction), and that even if the State court did have jurisdiction to assess damages against Petitioner, the cancellation of the contract or the injunction, if granted, would vitally affect the debtor, the trustee and his operations. Although injunctive relief was denied, the prayer for injunction was never dismissed for lack of jurisdiction, but was *judicially determined* by the courts below in denying such relief. It is too obvious to require argument that if the State courts had jurisdiction to deny the prayer for injunction, they also had jurisdiction to grant it.

The State courts did not have jurisdiction of the main subject matter and purpose of the suit. In *Ex Parte Baldwin*, 291 U. S. 610, opinion by Mr. Justice Brandeis, the Court said:

> "It is true that the investment company seeks, in addition to the adjudication of the forfeiture of the right of way, damages 'in the sum of $150,000' from the two railways and 'from the trustees, in their said capacity as trustees,' for failure to maintain the daily schedule of passenger trains set forth in the contract. This prayer of the complaint is no bar to staying the suit in the state court. The exclusive jurisdiction of the bankruptcy court is determined by the main purpose of the suit, which is to have the forfeiture declared and the alleged cloud upon title removed. The claim for damages is merely an incident."

The fact that the trial court did not allow the injunction or award the exemplary damages sought cannot change the nature of the suit, nor can the fact that Petitioners answered before filing their motions to stay and their pleas to the jurisdiction of the trial court give any comfort to Respondent. As was said in *Isaacs* v. *Hobbs Tie & Timber Co., supra:*

> "* * * The jurisdiction in bankruptcy is made exclusive in the interest of the due administration of the estate and the preservation of the rights of both secured and unsecured creditors. This fact places it beyond the power of the court's officers to oust it by surrender of property which has come into its possession. Whitney v. Wenman, 198 U. S. 539, 25 S. Ct. 778, 49 L. Ed. 1157; In Re Schermerhorn (C. C. A.), 145 F. 341. Indeed, a court of bankruptcy itself is powerless to surrender its control of the administration of the estate."

See also *Palmer* v. *Larchmont Manor Co., supra*, page 21, holding that the trustee cannot, even by choice, confer jurisdiction on any other court.

We cannot over-emphasize the point that the rights granted The St. L. B. & M. under the trackage agreement of 1904, which vested in the Trustee in Bankruptcy, constituted property of the debtor in possession of the Trustee and within the exclusive jurisdiction of the court of bankruptcy. The fact that the rights were granted by contract or lease and not by deed is immaterial, for as was said by Mr. Justice Reed in *Warren* v. *Palmer*, 310 U. S. 132:

> "It is immaterial what title the Debtors had, whether a lease or a fee. The physical property covered by the lease was in the custody of the Connecticut Court by virtue of the provision of Section 77a. By virtue of subdivisions 77c(10) and 77c(6), it is clear that leaseholds are in some instances to be operated by the lessee's trustees."

The Courts below assumed jurisdiction over a cause of action which sought to interfere directly with and to adjudicate the title to the property of the debtor, in possession of the Trustee in Bankruptcy; one which would impede the effectuation of a plan of reorganization, and one involving matters of national interest, the determination of which is vested exclusively in the Interstate Commerce Commission. The express provisions of Section 77 of the Bankruptcy Act and the authorities cited make it clear, beyond dispute, that the State courts had no jurisdiction to hear or determine such a case. The interest of the public in the operation of a bankrupt railroad, as well as the interest of creditors in the due administration of the estate and the preservation of their rights, require that on at least some of the matters involved the jurisdiction of the court of bankruptcy be exclusive.

POINT II

The stay orders entered in the Court of Bankruptcy prohibit the prosecution of this suit in the State Court.

The only exception to exclusive jurisdiction of the court of bankruptcy is the proviso of sub-section (j) of Sec. 77 of the Act, 49 Stat. 911, 922, 11 U. S. C. Sec. 205(j), reading as follows:

> "In addition to the provisions of Section 29 of this Title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: *provided*, That suits or claims for damages caused by the operation of trains, buses, or other means of transportation may be filed and prosecuted to judgment in any court of competent juris-

diction and any order staying the prosecution of any such cause of action or appeal shall be vacated."

The proviso just quoted did not appear in the original Act. 47 Stat. 1467, Sec. (1). Conformably to the statute then in force, on the 13th day of May, 1933, the Bankruptcy Court issued its stay order No. 18 (R. 120, 122), providing, among other things:

> "All persons, firms or corporations whatsoever and wheresoever situated * * *, are hereby restrained and enjoined from interfering with * * * in any manner whatsoever any portion of the * * * railroad's properties and premises belonging to or in the possession of any of the Debtor's, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner, to prevent the discharge by the Debtors of their duties in the operation of said property and business under orders of this court."

Clearly, so far as the suit against the Trustee is concerned, it sought to interfere by injunction and cancellation with property in the possession of the Trustee and to interfere with the discharge of the duties of the Trustee in the operation of the property. On the other hand, concerning the suit against the debtor itself, subsequent to the amendment of sub-section (j) by the Act of August 27, 1935, 49 Stat. 922, the Bankruptcy Court, on December 2, 1935, entered its General Order 116(a) (R. 124, 125), reading in part:

> "That the commencement or continuation of suits against any of the debtor companies is hereby stayed and enjoined until after final decree entered in these proceedings; provided, however, that suits or claims for damages caused by the operations of trains, buses, or other means of transportation may be filed and prosecuted to judgment in any court of competent juris-

diction, and any order heretofore staying the prosecution of any such causes of action or appeal is hereby vacated."

Obviously, Order 116(a) was entered by the bankruptcy court to conform to the amendment of the Act. Congress and the courts have long recognized the injustice of forcing litigants having claims for damages to freight, for personal injuries, or property damage, to bring suit against the trustee in bankruptcy or receiver in equity in a forum far removed from the scene of the accident or loss, and the plain purpose of the proviso, added by the Act of August 27, 1935 and recognized in Order 116(a), was to remedy an existing abuse by permitting the prosecution in local courts of the normal type of freight loss and damage claims, personal injury claims and other claims based upon negligence of the trustee's agents in their operation of his trains or buses. It is clear that neither the Act nor the Order was intended to apply to a suit to enjoin the trustee from operating railroad property, or a suit to try the Trustee's title to property claimed by him or to assess damages for the Trustee's use of property under an allegedly invalid or terminated contract.

There is no reason, by interpretation, to broaden the provisions of the proviso of the Act of August 27, 1935, to permit the prosecution of such a suit in the State court. *Moreover, an integral part of Respondent's suit, if not its prime object, was the demand for an injunction staying the trustee's operations, not in any sense of the word a claim for damages.* As we have already pointed out, the matter of jurisdiction is determined by the relief sought and not by the ultimate relief granted. *Ex Parte Baldwin, supra.*

In *Re Chicago and E. I. Ry. Co.*, 121 Fed. (2d) 785, writ of certiorari denied, 314 U. S. 653, the Circuit Court of Appeals for the Seventh Circuit considered the scope of Sec-

tion 77, Subdivision j, and in holding that the proviso permitted prosecution in the state court of a negligence action arising out of a train wreck, said:

"What reason or reasons did Congress have for making this exception? We can hardly call it speculation when we suggest several which at once present themselves.

"*It evidently placed personal injury claims on a different footing from other claims; whose origin was traceable to an agreement, express or implied.* It is not inconsistent with historical analogies to place injuries to the person in a class different from all other kinds of claims. This Act gives to holders of such claims preference, so far as jurisdiction is concerned, over claimants holding contractual claims. It permits the claimants to sue in the state court and in any Federal court, as well as the one which has jurisdiction of the debtor's estate.

"The plaintiff can thus have the benefit of a jury trial, if he so desires. This in itself is sufficient grounds for making a distinction between claims arising out of personal injuries and other kinds, where a jury trial is not thought so essential.

"Giving jurisdiction to local courts of personal injury cases permits the claimant to sue in local jurisdictions, thus avoiding burdensome cost and long delays which in some instances might be said to be a denial of justice.

"Whatever may have been the reasons, it is clear that the Congress intended to and did make special provision for personal injury cases arising out of the operation of trains. And there is no clear and sufficient reason advanced for dividing the list of such personal injury claims into those which arose before the adjudication and those whose claims occurred subsequently."

See also *Jennings* v. *Public Utility Commission*, 14 Atl. (2d) 882, and *Eldridge* v. *White & Black River Valley Ry. Co.*, 109 S. W. (2d) 658.

This case is certainly not one of the type contemplated by Congress in adopting the proviso of Subsection j of Sec. 77 of the Act, but was a claim whose origin was traceable to an express agreement, the contract of 1904, and was a suit to judicially determine property rights of the trustee and for injunction.

Point III

The trackage contract here involved cannot be lawfully cancelled or terminated in the absence of a certificate of public convenience and necessity, issued by the Interstate Commerce Commission, permitting the abandonment of petitioners' operations authorized by and conducted under said trackage contract.

Paragraph (18) of Section 1 of the Interstate Commerce Act (originally enacted by the Act of February 28, 1920, 41 Stat. 477, and amended by the Act of September 18, 1940, 54 Stat. 899), reads in part as follows:

> "* * * and no carrier by railroad, subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment, * * *."

Therefore, since 1920, it has been unlawful for any common carrier by railroad subject to the Interstate Commerce Act to abandon all or any portion of its line of railroad, or the operation thereof, unless and until such a certificate shall first have been obtained from the Interstate Commerce Commission. The penalty provided for violation of Paragraph (18) of said section, *applying not only to corporations but also to their trustees*, agents, officers and directors, is a fine of not more than $5,000.00, or imprison-

ment for not more than three years, or both. 49 U. S. C., Sec. 1(20). 41 Stat. 478.

The Court of Civil Appeals, in its opinion, recognizes that Petitioners could not lawfully abandon operations under the trackage agreement, but holds that, nevertheless, the contract was legally terminated and cancelled as of October 31, 1941, which results in the absurd conclusion that Respondent could, at will, terminate the contract of 1904 in part (as to the consideration to be paid for the exercise of the rights granted) but not in whole, and could treat Petitioners as trespassers forbidden by law to leave the property trespassed upon. This conclusion is not sustained by the authorities.

The necessary effect of Sec. 1(18) of the Interstate Commerce Act was either (a) to nullify completely the provision of the 1904 contract for termination on twelve months notice, or (b) to require, in addition to such notice, the issuance by the Commission of a certificate of public convenience and necessity authorizing abandonment of Petitioners' operations as a condition precedent to the exercise by either party of the right to terminate the contract. This position is sustained by the language of the Supreme Court in *Warren* v. *Palmer*, 310 U. S. 132, *supra*, in which Mr. Justice Reed said:

> "Railroad reorganization in bankruptcy is a field completely within the ambit of the bankruptcy powers of Congress. Under the commerce clause of the Constitution Congress likewise has exercised its power to provide for the continued operation of interstate railroads such as petitioner. The fact that the operator operates under a lease does not affect the force of the requirement that the operation must continue until a certificate permitting abandonment is issued by the Interstate Commerce Commission. The judicial functions of the bankruptcy court and the administrative

functions of the Commission work co-operatively in reorganizations."

In the first place, it should be made clear that no constitutional question of interference with contract is involved, since the constitutional prohibition against laws impairing the obligation of contracts is a limitation on the power of the States and not on the power of the Federal government. *Louisville & Nashville R. Co.* v. *Mottley*, 219 U. S. 467.

If, as pointed out in the *Mottley* case, Congress, in the course of regulating Interstate Commerce, has power to completely destroy a private contract which conflicts with such regulations, it follows that Congress may add, as a condition of terminating an existing contract, a further requirement or condition, namely, securing a certificate of public convenience and necessity, permitting the abandonment of the operations carried on pursuant to the contract prior to exercising the right of termination. Of course, if Respondent could not cancel the contract without the issuance of the necessary certificate by the Interstate Commerce Commission, then the contract is still in force and effect, and the judgment for damages, not based on the consideration provided by the contract, is wrong.

A well considered decision in a parallel case is that of the Supreme Court of New Mexico, in *Taylor* v. *Santa Fe, etc., Co.*, 34 Pac. (2d) 1102, 1104, 38 N. M. 457. The two railroads there involved were both, as here, engaged in interstate commerce. Prior to April 17, 1931, the San Juan "possessed perpetual trackage over the line of appellant. On that day * * * an instrument called a 'reconveyance, release and cancellation', was executed by the San Juan Railroad, purporting to reconvey to appellant * * * all its trackage rights over appellant's line." Subsequently, Taylor, the receiver of the San Juan, sued ap-

pellant to enjoin it from interfering with him in the operation of trains over the line which had been subject to such trackage rights. From a decree for the receiver the owning line appealed. The Court said:

> "The necessary effect of the attempted reconveyance of April 17, 1931, would be an abandonment of operations by the San Juan Railroad without the consent of the Interstate Commerce Commission, prohibited by, and made a penal offense under, Federal statute. It is manifest, under the foregoing principles, that the agreement was ineffective to divest the San Juan Railroad of the trackage rights here contested. Appellant can claim no rights thereunder, and the trial court rightly refused to recognize it as a defense to this suit."

It will be observed that in the *Taylor* case the Court held that the reconveyance of the trackage rights was ineffective for lack of a certificate by the Interstate Commerce Commission, notwithstanding the fact that the parties had undertaken *by mutual agreement* to cancel the trackage rights. The agreement of the San Juan was evidenced by its execution of the so-called reconveyance; that of appellant by its acceptance thereof, plus its subsequent reliance thereon as a defense to the suit. It was held, nevertheless, that a certificate by the Interstate Commerce Commission that public convenience and necessity permitting the abandonment of the operations of the San Juan was so indispensable that the parties, in the absence of such a certificate, could not validly enter into the contract evidenced by the so-called reconveyance. In the present case, for the same reason, it should be held that *one party* to the trackage contract of 1904 may not, *without the consent of the other party*, terminate that contract in the absence of the required certificate.

In the briefs and arguments before the lower courts, Respondent took the position that the necessary certificate of the Interstate Commerce Commission should have been procured by Petitioners, and the Court of Civil Appeals in its opinion said:

> "The present case is distinguishable upon the facts. It appears that the Tex-Mex Railway made application to the Interstate Commerce Commission for permission to terminate the contract of November, 1904, in accordance with the provisions thereof. This application was returned by the Secretary of the Commission, together with his statement that:
>
> 'The Commission is without authority to consider an application of the nature submitted by you. Its jurisdiction under Sec. 1(18) of the Interstate Commerce Act would extend only to abandonment of operation by the St. Louis, Brownsville & Mexico Railway Co.
>
> 'I note that on November 1, 1940, notice in accordance with the terms of the trackage agreements was written to the Brownsville Company of the intent of the Texas Mexican to cancel the contract. No application has been filed by the Brownsville Company. Accordingly the application and copies are returned herewith.'
>
> "Since receipt of this communication neither the Tex-Mex Railway, nor the Brownsville Railway (or its Trustee) have in any way sought to invoke the jurisdiction of the Interstate Commerce Commission with reference to this controversy." (R. 193).

The Court will observe that Respondent's "application" (R. 175-185), was not an application for a certificate and that Respondent admits that none was made (R. 185). We think it is too obvious to require argument that a letter of the Secretary of the Interstate Commerce Commission stating that the Commission has no authority to con-

sider an application *for permission to terminate a contract*, is not a holding of the Commission, or of a court, or, for that matter, of the Secretary, that the Interstate Commerce Commission would not have had jurisdiction of an application by Respondent *for a certificate of public convenience and necessity permitting abandonment* of the trustee's operations over the lines in question. In fact, the Supreme Court has held that such certificate, if in fact in the public interest, could have been secured upon the application of any party having a proper interest in the subject matter. *Atchison, etc., Ry. Co. & Railroad Commission*, 283 U. S. 380. If the respondent could furnish the necessary service to the public and desired to put a stop to the Trustee's operations over its line it certainly had a proper interest in an application for a certificate permitting the abandonment.

The trackage contract of 1904 contained two principal provisions:

> (1) A grant by Tex-Mex to St. L. B. & M. of the right to operate the latter's trains over the former's property; and
>
> (2) An obligation by the St. L. B. & M. to pay Tex-Mex, for the exercise of the rights so granted, according to the formula contained in the contract.

Section 1(18) of the Interstate Commerce Act prohibits the Tex-Mex (and all others) from doing any act which would prevent St. L. B. & M. from exercising the rights so granted. The obligation to pay according to the contract formula is inseparable from the granted right to operate. The decision below is reducible to the single proposition that Tex-Mex, without subtracting a thing from the rights which in 1904 it granted to St. L. B. & M., has succeeded in cancelling out all those (and only those) provisions of

the contract prescribing the amounts payable. That proposition is patently unsound.

It is respectfully submitted that the contract of 1904 is still in force; that, therefore, the compensation fixed by that contract and which Petitioners have at all times stood ready to pay (R. 1, 7), is the only measure of the amounts which may be due Respondent for the use of its property.

Point IV

Exclusive jurisdiction to determine the fair rental or compensation for the use by one interstate carrier of a line of railway owned and used by another interstate carrier is vested exclusively in the Interstate Commerce Commission.

The administration of a bankrupt railroad corporation is centered in two forums. As to matters affecting the rights of creditors and the effectuation of a fair and orderly plan of reorganization, the jurisdiction of the bankruptcy court is complete and exclusive; but in matters affecting the public interest, the public convenience in, and necessity of, adequate rail service, the jurisdiction of the Interstate Commerce Commission is paramount.

The intertwining of the interests of creditors and the public is recognized by the Bankruptcy Act itself and is pointed out in *Palmer* v. *Massachusetts*, 308 U. S. 79, opinion by Mr. Justice Frankfurter, where the court said:

> "The judicial process in bankruptcy proceedings under Sec. 77 is, as it were, brigaded with the administrative process of the Commission. From the requirement of ratification by the Commission of the trustees appointed by the court to the Commission's approval of the court's plan of reorganization the authority of the court is intertwined with that of the Commission. Thus, in Sec. 77, Sub. c, and Sec. 77, Sub. o, the power of the district courts to permit abandonments is spe-

cifically conditioned on authorization of such abandonments by the Commission."

Although the jurisdiction of the Bankruptcy Court over the debtor and its properties is made exclusive by Section 77, Subd. a of the Bankruptcy Act, 11 U. S. C. A., Sec. 205a, the paramount jurisdiction of the Interstate Commerce Commission over matters affecting the public interest is recognized by other sections of the same Act. Subd. c(1) requires the appointment of trustees of the debtor railroad to be ratified by the Interstate Commerce Commission. Subd. c(2) gives the Commission supervision over the compensation paid to trustees and their counsel. Subd. c(3) permits the issuance of trustees' certificates only with the Commission's approval. Subd. c(10) empowers the Commission to set up the accounts for the allocation of earnings among the various portions of the debtor's line. Subd. c(12) gives the Commission supervision over allowances for the expenses of various parties in interest in connection with the reorganization proceedings. Subds. d and e give to the Commission control over any proposed plan of reorganization.

The jurisdiction of the Interstate Commerce Commission over the abandonment of any line of railroad by an interstate carrier is expressly recognized in the Bankruptcy Act. Sec. 77, c, Title 11 U. S. C. A., Sec. 205(c), reads in part as follows:

> "The trustee * * * shall determine what lines * * * should be abandoned * * * during the pendency of the proceedings, in the interest of the debtor's estate and of ultimate reorganization, but without unduly or adversely affecting the public interest, and shall present to the judge petitions * * * for authority to abandon * * * any such property; and upon order of the judge made after a hearing * * * authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when

required by Chap. I of Title 49 as amended February 28, 1920, or as it may be hereafter amended, the trustee * * * shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment * * * in accordance with the order of the judge * * *."

Respondent has contended, notwithstanding its prayer for injunction and exemplary damages, that the main purpose of its suit was to establish a just compensation for the use of its properties. If that in fact be the nature of its case it none the less is one which affects the public interest in the financial structure, responsibility and continued ability to furnish service as to each of the carriers involved and jurisdiction over the determination of what is a fair compensation under a trackage agreement is vested exclusively in the Interstate Commerce Commission.

In *Transit Commission, et al. v. United States*, 289 U. S. 121, the Long Island Railroad was using certain tracks of the Pennsylvania Railroad under a trackage agreement. Both carriers sought and secured from the Interstate Commerce Commission a certificate of public convenience and necessity authorizing the lessee's operations and specifying the rental.

The New York Transit Commission contended that, under the New York railroad law, it was the only body which had jurisdiction to approve a contract covering operations by one railroad over the lines of the other, and contended that Section 1(18) of the Interstate Commerce Act did not apply to railroad operations under trackage rights. This Court held that the jurisdiction of the Interstate Commerce Commission was exclusive, and said:

"So far as concerns the purpose to be attained by this legislation (the Transportation Act of 1920), there is no room for a distinction between unjustifiable expenditures for the construction or operation of new

mileage on the one hand and inadequate rentals or extortionate exactions under trackage agreements on the other. The reasons for the exertion of federal authority, to the exclusion of state regulation, apply with like force to both. The Act, including Paragraph (18) (dealing with certificates of public convenience and necessity for construction of lines or abandonment of operations), and related provisions, is construed to make federal authority effective to the full extent that it has been exerted and with a view of eliminating the evils that Congress intended to abate.

* * * On the taking effect of the Transportation Act the state commission was stripped of power to prescribe terms for such operation. The authority of the Interstate Commerce Commission is paramount and, in respect of the operation and agreement under consideration, it is necessarily exclusive." (Parenthetical insertion ours.)

The Court of Civil Appeals, in its opinion, attempts to distinguish the Transit Commission case on the theory that (a) Respondent's "application for permission to terminate the contract of 1904" was denied and that no party to the case had sought to invoke the jurisdiction of the Interstate Commerce Commission with reference to this controversy. The Court of Civil Appeals, from such statement, concludes that since no affirmative action had been taken by the Interstate Commerce Commission, which would conflict with the action of the trial court, the trial court had jurisdiction of the controversy. The Court of Civil Appeals does not cite any cases in support of its conclusions in this respect. We suppose the court had in mind that line of cases holding that where Congress had not exercised its powers to regulate certain phases of Interstate Commerce the States may exercise regulatory powers until such time as Congress sees

fit to legislate upon the subject. In this instance, the Congress *has* legislated upon the subject and has given the Interstate Commerce Commission exclusive regulatory powers over trackage agreements, and the fairness of rentals thereunder. The jurisdiction of the Commission, as pointed out in the Transit Commission case, is exclusive. Such legislative action cast upon the party seeking abandonment of operations the affirmative and positive duty to act. Respondent wholly failed so to do. It did not file a proper application. It filed no application for a certificate. It got no ruling from the Interstate Commerce Commission nor a disclaimer of jurisdiction. All that it ever got was a letter from the Secretary (not a member of Interstate Commerce Commission) that it had no jurisdiction over *an application for leave to terminate a contract.* That letter affirmed the Commission's power to issue a certificate authorizing abandonment of operations.

Just as the interests of due administration of a bankrupt estate and the interest of the creditors in the protection of their rights require that exclusive jurisdiction of suits against the trustee be vested in the bankruptcy court, so the interest of the public in the continued financial ability of an interstate carrier to furnish transportation and otherwise to serve the public, requires that the jurisdiction of the Interstate Commerce Commission to determine what is fair compensation for the use of the line of one carrier by another be exclusive. If the determination of such compensation were left to the courts, the amount of the compensation would be determined by different standards in each instance; it might be left to the discretion of a judge in one case, or be fixed by a jury in another, and there would be no uniformity between judges, no uniformity between the findings of various juries, nor any uniformity as to the rules of evidence or the measure of damages to be applied. In *Texas & Pacific Railway Company* v. *Abilene*

Cotton Oil Company, 204 U. S. 426, opinion by Mr. Justice, later Chief Justice, White, the plaintiff sued in the Texas Courts to recover the excessive part of an allegedly unreasonable tariff rate collected by an interstate carrier, although the rate charged had been filed with the Interstate Commerce Commission. The State Court found the rate in fact to be unreasonable and excessive and gave judgment for the excess to the plaintiff. On writ of error, this Court said:

> "For if, without previous action by the Commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that, unless all courts reached any identical conclusion, a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed, the recognition of such a right is wholly inconsistent with the administrative power conferred upon the Commission, and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirement as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would destroy the prohibitions against preferences and discrimination, and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted. Indeed, no reason can be perceived for the enactment of the provision endowing the administrative tribunal which the act created with power, on due proof, not only to award reparation to a particular shipper, but to command the carrier to desist from violation of the act in the future, thus compelling the

alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in courts to grant relief on complaint of any shipper, upon the theory that the established rate could be disregarded and be treated as unreasonable, without reference to previous action by the Commission in the premises. This must be, because, if the power existed in both courts, and the Commission to originally hear complaints on this subject, there might be a divergence between the action of the Commission and the decision of a court. In other words, the established schedule might be found reasonable by the Commission in the first instance and unreasonable by a court acting originally, and thus a conflict would arise which would render the enforcement of the Act impossible."

The present case is shown to contain similar difficulties. A jury has fixed the amount claimed by Respondent for use of the properties to August 27, 1943. That use, presumably, is still continuing. Who will fix the damages for subsequent periods? If the decisions of this Court are followed, and the Interstate Commerce Commission is held to be the sole and exclusive authority, such questions disappear. No other rule is workable.

Conclusion

There is something fundamentally wrong in the judgment of a state court which arrogates to itself jurisdiction of an action to adjudicate property rights of an interstate railroad, in reorganization under Section 77 of the Bankruptcy Act, and to enjoin the operations of a trustee in bankruptcy over property in custodia legis.

There is something fundamentally wrong in the judgment of a state court which disregards the settled legislative and judicial policy of the nation entrusting the public interest in interstate carriers by railroad to the Interstate

Commerce Commission and which substitutes a rule of damages fixed by court and jury and varying in each forum and in each case for the judgment of that expert administrative agency as to what is a fair compensation for the use of the tracks of one interstate carrier by another such carrier.

There is something fundamentally wrong in any judgment which treats a Trustee in Bankruptcy as a trespasser upon property which he cannot abandon without being subjected to a fine of $5000 per day, or imprisonment not in excess of three years.

It is such a judgment that we ask the Court to review.

PETITIONERS respectfully pray that this Honorable Court exercise its jurisdiction to grant a writ of certiorari to review the judgment of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, and for such other orders and relief as may be appropriate.

Respectfully submitted,

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